

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF FLORIDA  
PENSACOLA DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CIVIL ACTION NO. 88-30168WS

REICHHOLD CHEMICALS, INC.,

Defendant.

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## I. INTRODUCTION

WHEREAS, the United States, acting on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), has filed a Complaint alleging that "hazardous substances" and "pollutants and contaminants," as defined, respectively in Sections 101(14) and (33) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), 42 U.S.C. §§ 9601(14) and (33), were sent to and disposed at the Pioneer Sand Company Site ("Site");

WHEREAS, the Site is an inactive sand mining facility owned by the Pioneer Sand Company, into which various hazardous substances, pollutants, contaminants, and/or hazardous wastes have been deposited; approximately 75% of the Site is an excavation

pit, while the remaining 25% is a fill area consisting of the previously mentioned material; investigations indicate that the excavation pit extends to a maximum depth of about thirty (30) feet; a surface impoundment and a quarry pond are located in the excavated area;

WHEREAS, Plaintiff has alleged that the Site is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), and that the past, present and potential migration of hazardous substances, pollutants and contaminants from the Site constitutes an actual or threatened "release" as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22);

WHEREAS, Plaintiff has determined that the actual and/or threatened release of hazardous substances, pollutants and contaminants at or from the Site requires remedial action under Sections 104 and 106 of CERCLA, 42 U.S.C. §§ 9604 and 9606, and has determined that the actions required by this Consent Decree are necessary to protect the public health and welfare and the environment;

WHEREAS, Plaintiff has alleged that Settlor is jointly and severally liable pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for the reimbursement of all funds expended by EPA not inconsistent with the National Contingency Plan and Section 104 of CERCLA, 42 U.S.C. § 9604, for investigations, cleanup and enforcement activities, other response actions relating to the Site, and for injunctive relief pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606;

WHEREAS, the Department of the Navy ("Navy") may be jointly and severally liable pursuant to Sections 107(a) and 120 of CERCLA, 42 U.S.C. §§ 9607(a) and 9620, for the costs expended by Plaintiff not inconsistent with the National Contingency Plan (NCP) and Section 104 of CERCLA, 42 U.S.C. § 9604, for investigations, cleanup and enforcement and other response actions relating to the Site, and for injunctive relief pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606;

WHEREAS, in order to settle such potential liability by the Navy, Settlor and the Navy have reached a separate agreement which provides for 50% reimbursement by the Navy to Settlor for the costs incurred by Settlor pursuant to this Consent Decree. (A copy of the Agreement between the Navy and Settlor is appended for informational purposes as Appendix D. The parties do not intend to make Appendix D an enforceable part of this Decree.);

WHEREAS, in October 1981, the Site was proposed for the National Priorities List and finalized for inclusion in March 1983 in accordance with the requirements of Section 105 of CERCLA, 42 U.S.C. § 9605;

WHEREAS, a remedial investigation ("RI") was conducted at the Site between January and June 1985, and in August 1985, additional on-site sampling was conducted;

WHEREAS, a feasibility study ("FS") was completed in December 1985;

WHEREAS, based on the results of the RI and additional sampling conducted at the Site in April 1986, Plaintiff undertook an immediate removal action;

WHEREAS, EPA issued a Record of Decision ("ROD") dated September 26, 1986, determining, after consultation with the State of Florida, the remedial cleanup measures to be implemented at the site;

WHEREAS, the Parties, acting in good faith to resolve any environmental problems arising from the Site, recognize that the public interest is served by this settlement which avoids prolonged and complicated litigation and facilitates expeditious Site remediation;

WHEREAS, Plaintiff has determined that the actions required by this Consent Decree are consistent with the National Contingency Plan, that Settlor will retain qualified personnel to perform these actions, and that if these actions are performed according to the terms of this Decree, they will be performed properly and promptly by the Settlor;

WHEREAS, Settlor and the Navy deny responsibility for the presence at, or any release from the Site of hazardous substances, pollutants and contaminants, and deny any legal or equitable liability under any statute, regulation, ordinance or common law for any damages or response costs caused by, resulting from or arising out of the generation, storage, treatment, handling or disposal of hazardous substances, or actual or threatened release of hazardous substances at or from the Site. Any payment made hereunder (other than stipulated penalties paid pursuant to Section XXV) shall not be deemed a fine, penalty, or monetary sanction;

NOW, THEREFORE, without trial, adjudication or admission of any issue of law, fact, liability or responsibility by Settlor,

and without this Consent Decree being admissible as evidence in any proceeding except in a proceeding to enforce the terms of this Decree or as relevant to an adjudication between Settlor and the Navy, it is hereby ORDERED, ADJUDGED AND DECREED that:

## II. JURISDICTION

This Court has jurisdiction over this matter and of the parties consenting hereto. The Parties agree not to contest the jurisdiction of the Court to enter this Consent Decree or, in any subsequent action, the Court's jurisdiction to enforce or terminate it. The Complaint filed by the Plaintiff states a cause of action upon which, if the allegations were proved, relief can be granted.

## III. STATEMENT OF PURPOSE

The purpose of this Consent Decree, as well as the intention of the Parties, is to: (A) protect the public health and welfare and the environment from the release of hazardous substances at and from the Site; (B) mitigate and avoid current and/or future property damage at the Site; (C) further the public interest by avoiding protracted litigation between the Parties; and (D) encourage the early and equitable resolution of claims by the EPA against the Settlor.

## IV. PARTIES BOUND

This Consent Decree shall apply to and be binding upon the Parties and their respective successors and assigns. Settlor shall provide a copy of this Consent Decree to the Contractor who will be performing the work and shall instruct the Contractor

to provide a copy thereof to any Subcontractors retained to perform the work. All work and contracts for work undertaken pursuant to this Decree shall be conditioned upon compliance with the terms of this Decree.

#### V. DEFINITIONS

The following definitions shall apply to this Consent Decree:

A. Pioneer Sand Company Site ("Site") means the inactive sand and mining facility owned by the Pioneer Sand Company and located on Saufley Field Road, five (5) miles west of Pensacola, Florida and all areas contaminated by hazardous substances emanating from the facility. The Site's approximate geographic coordinates are 30°27'30" north latitude and 37°19'45" west longitude.

B. CERCLA means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499.

C. Defendant means Reichhold Chemicals, Inc., a Delaware corporation doing business in the State of Florida, hereinafter, referred to as "Settlor."

D. Florida Department of Environmental Regulation ("FDER") means the State of Florida, Department of Environmental Regulation.

E. Hazardous Substances means any hazardous substance as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) or 40 C.F.R. § 302.4.

F. The National Contingency Plan ("NCP") means the plan promulgated pursuant to CERCLA Section 105, 42 U.S.C. § 9605, and codified at 40 C.F.R. Part 300 et seq., as amended.

G. Parties means all parties who are signatories to this Consent Decree.

H. Remedial Design Work Plan ("RD Work Plan") means a detailed outline and schedule of activities necessary to perform the Remedial Design. An outline of the tasks to be performed in the Remedial Design Work Plan is attached as Appendix B to this Consent Decree.

I. Remedial Design ("RD") means all work undertaken to design the technical aspects of the remedial activities to be implemented at the Site which shall be consistent with the Record of Decision ("ROD") attached hereto as Appendix A and shall be consistent with the NCP and the Superfund Remedial Design and Remedial Action Guidance dated June 1986.

J. Remedial Action Plan ("RAP") means the Remedial Action Plan which will be based on a Remedial Design Report as described herein, and which will provide for the scheduled performance of the Remedial Action performed at the Site.

K. Remedial Action ("RA") means the implementation of the Remedial Design consistent with the NCP and the Superfund Remedial Design and Remedial Action Guidance dated June 1986, including construction on-site, treatment processes, removals, groundwater monitoring, and any other tasks necessary to effectuate the Site's cleanup, by means of the remedy-of-choice as set out in the ROD.



L. RCRA means the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, et seq.

M. Release shall be used as that term is defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

N. Response Costs means costs incurred by EPA in connection with response activities taken by EPA at the Site pursuant to Sections 104 and 106 of CERCLA, 42 U.S.C. §§ 9604 and 9606.

#### VI. GENERAL PRINCIPLES

A. The Appendices to this Consent Decree, (except Appendix D) are a part of this Decree. The Remedial Design Work Plan, Remedial Design Reports, Remedial Action Plans, Remedial Action Reports, Project Operations Plans and other various reports and schedules prepared as required in this Decree shall, upon their approval by EPA, be incorporated by reference in the Decree, but shall not be attached to the Decree. These plans and reports shall be maintained by the Parties and, in the event of a dispute to be resolved by this Court, shall be presented to the Court.

B. Except as provided in Section XVIII (Covenant Not to Sue), nothing in this Consent Decree shall be deemed to limit the response authority of EPA under Section 104 of CERCLA, 42 U.S.C. § 9604, under Section 106 of CERCLA, 42 U.S.C. § 9606, or under any other federal response authority.

#### VII. WORK TO BE PERFORMED

##### A. EPA's Remedy as Specified in the Record of Decision

Settlor agrees to implement the remedy selected by EPA for the Site as set out in the Record of Decision ("ROD") and

in the list of tasks stated in the outline for the Remedial Design Work Plan, which outline is attached hereto as Appendix B. The remedy shall include proper landfill closure of fill and sludge pond areas pursuant to applicable provisions of the Resource Conservation and Recovery Act, Subtitle D and applicable provisions of Chapter 17-7 of the Florida Administrative Code; installation of an on-site leachate collection, treatment, and disposal system; on-site treatment and disposal of sludge pond waters; and operation and maintenance ("O&M") activities including groundwater monitoring, maintenance of the landfill cover, and maintenance of the leachate collection system and sludge removal activities.

B. Remedial Design Work Plan and Reports

The Remedial Design ("RD") Work Plan will be developed by Settlor based upon the ROD and the RD Work Plan outline attached hereto as Appendices A and B, shall be subject to approval by EPA and FDER, and shall describe in detail how the Settlor will design the remedy and provide a schedule for completion of the various components of the pre-design and design work. The completed design shall explain how the remedial action will be implemented. Settlor agrees to prepare the RD Work Plan in accordance with the ROD and the outline referenced above and to implement the RD Work Plan in accordance with the standards, specifications and schedules contained therein, and the schedule(s) set forth in this Consent Decree.

Settlor shall commence Task 1, Item 2 (Prepare a Remedial Design Work Plan) required by the RD Work Plan outline within seven (7) calendar days from the date of the entry of this Consent Decree. Within thirty (30) calendar days of commencement, Settlor shall complete Task 1, Item 2 and shall submit a Remedial Design (RD) Work Plan to EPA for approval. The Work Plan shall contain a schedule for completion of the remaining Items of Task 1 and a schedule for submission of a report ("RD Report") for Design Tasks 2, 3, 4, 5 and 6.

Within thirty (30) calendar days after EPA's receipt of the RD Work Plan, EPA shall notify Settlor in writing of EPA's approval or disapproval of the Work Plan or any part thereof. In the event of any disapproval of the RD Work Plan, EPA shall specify in writing both the deficiencies and any EPA recommended modification to the Work Plan.

Within thirty (30) calendar days of the receipt of EPA notification of disapproval, Settlor shall amend and submit to EPA a revised RD Work Plan. In the event of subsequent disapproval of the Work Plan, EPA retains the right to conduct a complete Remedial Design and Remedial Action and seek cost recovery pursuant to its authority under CERCLA.

Upon approval by EPA, the RD Work Plan is incorporated by reference in this Consent Decree.

A report ("RD Report") for design Tasks 2, 3, 4, 5 and 6 will be submitted to EPA for review and approval in accordance with the schedule set forth in the RD Work Plan. Within thirty

(30) calendar days after EPA's receipt of the RD report, EPA shall notify Settlor in writing of EPA's approval or disapproval of the report or any part thereof. In the event of any disapproval of the RD report or design criteria, EPA shall specify in writing both the deficiencies and any EPA recommended modifications to the RD report.

Within thirty (30) calendar days of the receipt of EPA notification of disapproval, Settlor shall amend and submit to EPA a revised RD report. In the event of subsequent disapproval of the report, EPA retains the right to conduct a complete Remedial Design and Remedial Action and seek cost recovery pursuant to its authority under CERCLA.

Upon approval by EPA, the RD report for each design task is incorporated by reference in this Consent Decree.

C. Remedial Action Plans

Within fifty (50) calendar days of receipt of notice that EPA has approved an individual RD report for each task, Settlor will submit to EPA a Remedial Action ("RA") Plan Report, which will describe in detail the methods Settlor intends to use to execute the design for that specific task. The RA Plan Report must specify the time schedules for implementation and completion of the work, the materials to be used, the technical aspects of conducting the work and all other items necessary for proper and timely performance of the work.

Within thirty (30) calendar days after EPA's receipt of the RA Plan Report, EPA shall notify Settlor in writing of EPA's

approval or disapproval of the plan or any part thereof. In the event of any disapproval of the RA Plan Report, EPA shall specify in writing both the deficiencies and any EPA recommended modifications to the RA Plan Report.

Within thirty (30) calendar days of the receipt of EPA notification of disapproval, Settlor shall amend and submit to EPA the revised RA Plan. In the event of subsequent disapproval of the Plan, EPA retains the right to conduct a complete Remedial Design and Remedial Action and seek cost recovery pursuant to its authority under CERCLA.

Upon approval by EPA, the RA Plan for each task is incorporated by reference in this Consent Decree.

D. Project Operations Plans

Within fifty (50) days of receipt of approval of an RA Plan, Settlor shall prepare and submit a Project Operations Plan (POP). The POP must include (1) a Site Health and Safety Plan, (2) a Field Activity Quality Assurance/Quality Control Plan consistent with the requirements of Section XII (Quality Assurance), (3) a detailed sampling and analysis plan, (4) a plan for satisfaction of permitting requirements, and (5) a description of chain-of-custody procedures.

Within thirty (30) calendar days after EPA's receipt of the POP, EPA shall notify Settlor in writing of EPA's approval or disapproval of the POP or any part thereof. In the event of any disapproval of the POP, EPA shall specify in writing both the deficiencies and any EPA recommended modifications to the POP.

Within thirty (30) calendar days of the receipt of EPA notification of disapproval, Settlor shall amend and submit to EPA a revised POP. In the event of subsequent disapproval of the POP, EPA retains the right to conduct a complete Remedial Design and Remedial Action and seek cost recovery pursuant to its authority under CERCLA.

Upon approval by EPA, the POP for each RA Plan is incorporated by reference in this Consent Decree.

Within fifty (50) calendar days of receipt of EPA approval of the POP, Settlor shall implement the required work under the RA Plan in accordance with the schedule and requirements contained therein and in accordance with the POP for that Plan.

The POP shall be designed to insure that all pre-design, design and remedial field activities under this Decree will be conducted in accordance with the applicable requirements of the NCP and the Superfund Remedial Design and Remedial Action guidance dated June 1986 ("RD/RA guidance"). Should there be any inconsistencies between the NCP and the RD/RA guidance, the NCP shall control.

E. Operation and Maintenance

Upon completion of the implementation of the RA Plan for each task, the operation and maintenance ("O&M") period will begin for that portion of the remedy. Settlor shall be responsible for designing, conducting and funding O&M activities undertaken in connection with the remedial work. Settlor shall prepare as part of the Remedial Design Work Plan an O&M Plan that ensures the long-term effectiveness of the remedial activities required by

this Decree. The Plan shall address the post-closure care requirements set forth at 40 C.F.R. Part 264 including:

- 1) maintaining the integrity and effectiveness of the final cover, including making repairs to the cap as necessary to correct the effects of settling, subsidence, erosion, or other events;
- 2) preventing run-on and run-off from eroding or otherwise damaging the final cover by maintaining and monitoring the run-on and run-off control system;
- 3) maintaining the groundwater monitoring system and complying with relevant and appropriate requirements of 40 C.F.R. § 264, Subpart F;
- 4) operating, maintaining and monitoring the leachate collection and treatment system;
- 5) a cost estimate for post-closure care consistent with 40 C.F.R. § 264.144;
- 6) a post-closure care inspection schedule for a minimum of at least twenty (20) years with a review every five (5) years for the possible reduction or extension of the twenty (20) year period, and subject to extension of the site security care period as provided by 40 C.F.R. § 264.117(b).

The O&M Plan shall include a schedule for completion of each activity and shall be developed in accordance with the review and approval procedures and schedules outlined in Paragraphs B, of this Section VII.

#### VIII. Remedial Action Progress Reports

A. The Settlor shall provide or cause its contractors to provide written reports to EPA on a monthly basis from the entry of this Consent Decree until all on-site construction activities are completed and approved by EPA. Thereafter, semiannual reports of operation and maintenance activities for site maintenance (e.g., maintenance of landfill cover, leachate collection system,

sludge removal, and groundwater monitoring system) shall be submitted to EPA on April 1 and October 1 of each year until termination of this Consent Decree. A separate schedule will be established for monitoring the groundwater conditions as specified in Section VIII of the ROD. These progress reports shall describe the actions that have been taken toward achieving compliance with this Consent Decree, including a general description of remedial action activities projected to be commenced or completed during the next reporting period, a summary of results from any analytical work conducted in relation to the Site, and a description of any problems that have been encountered or are anticipated by the Settlor in commencing or completing the activities, and shall include a copy of the most recent statement of the trust fund or escrow account established pursuant to Section XV. The monthly progress reports are to be submitted to EPA by the 15th of each month for work done the preceding month and planned for the current month.

B. If a progress report is deemed to be incomplete or otherwise deficient, EPA shall notify the Settlor within twenty-one (21) days of receipt of such progress report by EPA. The notice shall include a description of the deficiencies. The Settlor shall make, or cause its contractors or representatives to make, the necessary changes and resubmit the progress report within fourteen (14) days of receipt of EPA's notice.

C. If EPA determines that a resubmitted progress report is deficient, the Settlor shall be deemed to be out of compliance with this Consent Decree.



IX. APPOINTMENT AND DUTIES OF REMEDIAL PROJECT MANAGER  
AND REMEDIAL ACTION COORDINATOR

A. On or before the effective date of this Consent Decree, EPA shall appoint a Remedial Project Manager ("RPM") and the Settlor shall appoint, subject to reasonable EPA approval pursuant to Section XI (Approval of Personnel), a Remedial Action Coordinator ("RAC") to act on their respective behalfs to oversee completion of the RD/RA. EPA and the Settlor each shall have the right to change their respective RPM and RAC. EPA shall accomplish this change by notifying the other party in writing at least ten (10) days prior to the change, if possible. Settlor shall accomplish this change by notifying EPA in writing at least thirty (30) days prior to the change and such change shall be subject to the procedures set forth in Section XI. If, however, such change is made necessary by sudden or emergency circumstances, Settlor shall accomplish such change by notifying EPA within forty-eight (48) hours of the change, and such change shall be subsequently subject to the EPA approval procedures set forth in Section XI.

B. EPA's Remedial Project Manager ("RPM") will observe and monitor the progress of the RD/RA being performed pursuant to this Consent Decree. The RPM shall have the authority vested by 40 C.F.R. §§ 300 et seq., 50 Fed. Reg. 47950 (November 20, 1985), and other applicable federal laws and regulations. Except as provided in Subparagraph C below, the RPM does not have the authority to modify in any way the terms of this Consent Decree, including the Appendices and Attachments, any design or construction plans, or any schedules submitted thereunder.

C. EPA's RPM will have the authority, inter alia, to halt, conduct, or direct any tasks required by this Consent Decree when conditions present an immediate and substantial risk to public health or welfare or the environment.

D. Neither the absence of the EPA RPM from the Site nor the lack of availability of an EPA representative by phone shall be cause for the stoppage of work except where the approval or concurrence of such coordinator of EPA is necessary for a particular item of work to continue or be completed, or where stoppage of work is necessary to abate an immediate and substantial risk of harm to public health or the environment or Site workers. Settlor shall orally notify EPA's RPM or other designated EPA representative as soon as possible that work has been discontinued. Further within seventy-two (72) hours after work is discontinued, Settlor shall submit to EPA a written explanation of why work was discontinued. Should a disagreement arise between EPA and Settlor concerning the validity of Settlor's decision to discontinue work, the dispute shall be resolved in accordance with the provisions of the Dispute Resolution section (Section XXIII) of this Consent Decree.

X. FAILURE TO IMPLEMENT THE  
REQUIREMENTS OF CONSENT DECREE

A. Subject to the Force Majeure provision (Section XXII), the Settlor is obligated to take all steps necessary to ensure that the RD/RA is completed according to the schedule(s) established pursuant to this Consent Decree. If Settlor fails to comply in a timely manner with any performance date or other requirement of

this Consent Decree and such delay is not excused pursuant to the Force Majeure provision, Settlor shall be deemed to be out of compliance with this Consent Decree.

B. In the event EPA determines that the Settlor has failed without good cause to timely implement the RD/RA, or any portion thereof, EPA may, after written notice to the Settlor and consistent with the Dispute Resolution procedures of Section XXIII, perform any or all portions of the RD/RA that remain incomplete, provided, however, that EPA shall first give notice to the Navy and that the Navy shall have twenty (20) days from the receipt of such notice to inform EPA of its desire to perform the uncompleted part of the RD/RA pursuant to the same specifications, timetable and obligations imposed upon Settlor by this Consent Decree. Within twenty (20) days of EPA's receipt of the Navy's notice, EPA shall inform the Navy in writing of EPA's determination with respect to the Navy's performance of the uncompleted portion of the RD/RA. If EPA determines that it is appropriate for the Navy to complete the RD/RA, EPA may modify any schedule and/or timetable affected by the Navy's assumption of RD/RA activities.

C. If EPA performs all or portions of the RD/RA because of the Settlor's failure to comply with its obligations under this Consent Decree, the Settlor shall reimburse EPA for the costs, not inconsistent with the NCP that are incurred by EPA in performing such work within thirty (30) days of receipt of demand and all supporting documentation for payment of such costs.

#### XI. APPROVAL OF PERSONNEL

All response work performed pursuant to the RD Work Plan and RA Plans shall be under the direction and supervision of qualified personnel. At least thirty (30) days prior to the initiation of remedial design, field work and/or actual construction, the Settlor shall notify EPA in writing regarding the identity of the contractor, subcontractor, laboratory and/or Remedial Action Coordinator carrying out such work. EPA may, within twenty (20) days of receipt of the notice, reasonably disapprove the use of any contractor, subcontractor, laboratory and/or Remedial Action Coordinator which EPA reasonably determines to be unqualified to perform the work or any portion thereof. Such a determination by EPA shall be made in writing and provide an explanation for any disapproval. In the event of a disapproval, the Settlor shall notify EPA within sixty (60) days of the identity and the qualifications of the replacement contractor, subcontractor, laboratory and/or Remedial Action Coordinator. The EPA shall not be considered a party to any contracts between Settlor and persons retained to perform the work. In the event that EPA disapproves any contractor subcontractor, laboratory and/or Remedial Action Coordinator, EPA may modify any timetable affected by such disapproval.

#### XII. QUALITY ASSURANCE

Settlor shall use the quality assurance, quality control and chain of custody procedures in accordance with the U.S. EPA Region IV Environmental Services Division Engineering Support Branch

Standard Operating Procedures and Quality Assurance Manual dated April 1, 1986 (ESDSOP and QA), throughout all sample collection and analysis activities. This manual has been provided to Settlor by EPA. In order to provide quality assurance and maintain quality control regarding all samples collected pursuant to this Consent Decree, Settlor shall:

1. Ensure that EPA personnel and/or EPA authorized representatives are allowed reasonable access to the laboratories and personnel utilized by Settlor for analyses.

2. Ensure that the laboratories utilized by Settlor for analyses perform such analyses according to EPA methods or methods deemed satisfactory to EPA and submit all protocols to be used for analysis to EPA at least twenty-one (21) calendar days prior to commencement of analysis, provided, however, that protocols for emergency sampling agreed to by the RPM, or the OSC if the RPM is unavailable, may be submitted concurrently with said sampling.

3. Ensure that the laboratories utilized by Settlor for analyses participate in a quality assurance/quality control program equivalent to that which is followed by EPA and which is consistent with "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans" a copy of which has been provided to Settlor by EPA. As part of such a program, and upon reasonable request by EPA, such laboratories shall perform analyses of samples provided by EPA to demonstrate the quality of each laboratory's analytical data.

XIII. SAMPLING; DATA/DOCUMENT AVAILABILITY; PUBLIC  
ACCESS TO INFORMATION AND CLAIM OF CONFIDENTIALITY

A. SAMPLING

The Settlor shall make the results of all sampling and/or tests or other data generated by the Settlor, or on the Settlor's behalf, with respect to the implementation of this Consent Decree, available to EPA and shall submit these results in progress reports as provided in Section VIII of this Consent Decree.

At the request of the EPA, the Settlor shall allow split or duplicate samples to be taken by EPA and/or its authorized representatives of any samples collected by the Settlor pursuant to the implementation of this Consent Decree. The Settlor shall notify EPA in writing not less than one (1) week in advance of any proposed sample collection activity and orally not less than three (3) working days prior to commencing sampling activities. The RPM and RAC may agree in writing to a different notification period.

B. DATA/DOCUMENT AVAILABILITY

Upon request by EPA, Settlor shall provide copies to EPA of all records, documents and information generated by Settlor and its contractors in the course of performing the Remedial Design Work, Remedial Action and Operation and Maintenance Activities (RD/RA and O&M) including, but not limited to, sampling and analysis records, field sheets and field notes, engineering logs, chain of custody records, contracts, bills of lading, trucking

logs and correspondence. Additionally, Settlor's employees or representatives with knowledge of relevant facts concerning the performance of the RD/RA and O&M activities shall be made available to EPA upon reasonable notice and at reasonable times and places to provide information concerning the performance of these activities.

Nothing in this Paragraph shall be construed to deprive Settlor of any applicable legal privilege, including but not limited to, any attorney-client privilege or attorney work product.

C. PUBLIC ACCESS TO INFORMATION  
AND CLAIM OF CONFIDENTIALITY

All data, factual information and documents submitted by the Settlor to EPA pursuant to this Consent Decree shall be subject to public inspection unless Settlor asserts a confidential business information or trade secret claim. The Settlor may assert a confidentiality claim, if appropriate, covering part or all of the information requested by this Consent Decree pursuant to 40 C.F.R. § 2.203(b). Such an assertion shall be adequately substantiated when the assertion is made. Information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no such claim accompanies the information when it is submitted to EPA, it may be made available to the public without further notice to Settlor.

The Settlor shall not assert a confidentiality claim regarding any analytical, hydrogeological or chemical data generated as a result of or as part of the Remedial Design or Remedial Action, including O&M operations. The Settlor shall not assert a confidentiality claim with respect to any data or any

other scientific or engineering tests generated as a result of or submitted in support of a remedial proposal required by this Consent Decree.

XIV. COMPLETION OF REMEDIAL CONSTRUCTION WORK

A. Settlor shall notify EPA in writing, within thirty (30) days after the completion of the construction phase of the RA Plan for each task or group of related tasks (except O&M), that such required work has been completed. EPA shall, within sixty (60) days of receipt of the notification, and after consultation with FDER, review the construction phase of the RA plan for each task or group of related tasks and indicate its agreement or disagreement as to the completion of the construction phase. The construction phase of each RA plan shall be deemed to have been completed when EPA, after consultation with FDER, provides Settlor with written notification that the elements set forth in the RA Plan, except O&M, have been completed satisfactorily and in conformity with the Plan and this Decree.

B. If EPA determines that the construction phase of the RA Plan has not been completed in accordance with the standards and specifications set out in the Plan, in this Decree, and under CERCLA, it shall notify Settlor in writing of actions necessary to complete the construction and shall provide its reasons therefore, referencing the specific portion(s) of the RA Plan, and shall propose a schedule for completion. If Settlor does not, within thirty (30) days thereafter, object to the measures or schedule proposed by EPA, Settlor shall expeditiously undertake and complete



such measures in accordance with the proposed schedule of completion. If Settlor objects to such proposed measures, Settlor shall, within thirty (30) days of receipt of notice from EPA, notify the EPA in writing of the objections and the reasons therefor. In the event the Parties cannot resolve any dispute with respect to whether the construction phase of the RA Plan for each designated task has been fully completed, such disputes shall be resolved pursuant to the Dispute Resolution Section (Section XXIII) of this Consent Decree.

C. The RA Plans for all tasks shall be deemed to have been finally completed when the EPA, after consultation with FDER, certifies in writing and in conformity with Section 122(f)(3) of CERCLA, 42 U.S.C. § 9622(f)(3), that all of the elements of the Remedial Action, excluding O&M, set forth in the RD Work Plan and the RA Plans have been satisfactorily completed in accordance with the requirements of CERCLA, 42 U.S.C. §9601 et seq.

#### XV. TRUST FUND

A. By the effective date of this Consent Decree, Settlor shall establish a Trust Fund or other bank or escrow account to implement the Remedial Design and Remedial Action and to otherwise carry out the terms of this Decree and shall contribute at least \$375,000.00 to the Trust Fund or other bank or escrow account for engineering studies, detailed design work, remedial action implementation and operation and maintenance required to carry out the terms of this Consent Decree. As further assurance that adequate funds will be available to carry out the obligations of this

Consent Decree, the Navy shall provide EPA with proof of an obligation of funds for the site of \$1,500,000.00, to be used for the above-mentioned purposes. Thereafter, within thirty (30) days of receipt of a monthly invoice from Settlor, pursuant to the terms of the agreement between the Navy and Settlor attached hereto as Appendix A, the Navy shall deposit fifty percent (50%) of incurred costs into the Trust Fund or other bank or escrow account. The money in the Trust Fund or other bank or escrow account shall be used exclusively to pay proper and necessary expenses pursuant to this Consent Decree.

B. The Trust Fund or other bank or escrow account agreement shall be subject to approval by EPA as to form and shall be submitted to EPA within thirty (30) days of the entry of this Consent Decree. At the end of each calendar year, Settlor shall provide EPA a copy of the Trust Fund or other bank or escrow account agreement then in effect.

C. Settlor shall make additional payments to the Trust Fund or other bank or escrow account periodically, as necessary so that the Trust Fund or other bank or escrow account will be adequate to make payments on a current basis to fulfill the obligations of Settlor under this Consent Decree. Settlor shall prepare semiannual cash flow projections during the construction phase that project the level of funds that will be necessary for the Remedial Action for the succeeding six (6) month period. A one-year cash flow projection shall be provided by Settlor at the commencement of the O&M period and each succeeding year thereafter.

If the amount of money in the Trust Fund or other bank or escrow account is less than such projected level, Settlor shall make the necessary additional payments in sufficient time to assure the uninterrupted progress and timely completion of the Remedial Action, including O&M.

XVI. OVERSIGHT COSTS

A. The parties acknowledge that the EPA will incur costs at the Site after the effective date of this Consent Decree for oversight of the Remedial Design work and the Remedial Action including O&M to be performed by the Settlor. The Settlor shall fully reimburse the EPA for all such costs not inconsistent with the NCP. The EPA shall send Settlor a demand for payment, together with an accounting of the costs claimed, on an annual basis. Each such annual demand shall be made on or about December 1, and shall cover costs incurred during the preceding fiscal year, and shall be made for each fiscal year during which such costs are incurred. The payment shall be due within thirty (30) days of receipt of the demand for payment together with all supporting documentation and shall be made by certified or cashiers check payable to "EPA Hazardous Substance Superfund," shall specifically reference the Site, and shall be sent to:

United States Environmental Protection Agency  
Superfund Accounting  
P.O. Box 371003M  
Pittsburgh, PA 15251  
Attention: Superfund Collection Officer

with a copy to the Remedial Project Manager.

B. If Settlor wishes to assert that any such oversight costs are inconsistent with the NCP, it shall invoke the dispute resolution provisions of this Consent Decree.

XVII. COST REIMBURSEMENT

Settlor agrees to reimburse the Plaintiff for costs in the amount of \$596,486.34 incurred by the United States (as itemized in Appendix C) pursuant to CERCLA in connection with this Site. Such reimbursement shall be made by the Settlor within thirty (30) days of the effective date of the Consent Decree and shall be by certified or cashiers check made payable to the "EPA Hazardous Substances Superfund," shall specifically reference the Site, and shall be sent to:

United States Environmental Protection Agency  
Superfund Accounting  
P.O. Box 371003M  
Pittsburgh, PA 15251  
Attention: Superfund Collection Officer,

with a copy to the Remedial Project Manager.

XVIII. COVENANT NOT TO SUE

A. Except as provided in Paragraphs C and D of this Section, upon the issuance by EPA of a Certificate of completion for the successful completion of all Remedial Action activities other than O&M operations, the United States covenants not to sue the Settlor for covered matters. Covered matters shall include any and all civil liability to the United States for causes of action arising under Sections 106 and 107(a) of CERCLA and Section 7003 of RCRA relating to the Site. Provided, however, that EPA shall not issue a certificate of completion until Settlor can demonstrate

that O&M operations have been designed, are in place, and can reasonably be expected to achieve the requirements of this Consent Decree. This Paragraph is not and shall not be construed as a covenant not to sue any other person or entity not a party to this Consent Decree.

B. The Settlor hereby covenants not to sue the United States, except for the Navy, for any claims related to or arising from the Remedial Action or this Consent Decree, including any direct or indirect claims for reimbursement from the Hazardous Substance Superfund. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a CERCLA claim within the meaning of Section 111 of CERCLA and 40 C.F.R. § 300.25(d).

C. The provisions of Paragraphs A and B of this Section shall not apply to the following:

1. Claims based on a failure by the Settlor to meet the requirements of this Consent Decree;

2. Liability arising from the past, present or future disposal, release or threat of release of hazardous substances outside of the Site and not attributable to the Site;

3. Liability for the disposal of any hazardous substances taken from the Site;

4. Claims for any costs incurred by Plaintiff as a result of the failure of the Settlor to implement the Remedial Action in accordance with this Consent Decree;

5. Liability for injury to natural resources other than natural resources under the trusteeship of the United States Department of the Interior;

6. Criminal liability; and

7. Claims arising out of or based upon the agreement between Settlor and the Navy attached as Appendix D.

D. Notwithstanding any other provisions of this Consent Decree the United States reserves the right to institute proceedings in this action, or to institute a new action (1) seeking to compel the Settlor to perform additional response work at the Site, or (2) seeking reimbursement of United States' response costs, if:

1. for proceedings prior to EPA certification of completion of the Remedial Action,

a. conditions at the Site, previously unknown to EPA, are discovered after the entry of this Consent Decree, or

b. information is received, in whole or in part, after the entry of this Consent Decree

and these previously unknown conditions or this information shows that the Remedial Action is not protective of human health and the environment; and

2. for proceedings subsequent to EPA certification of completion of the Remedial Action,

a. conditions at the Site, previously unknown to EPA, are discovered after the certification of completion by EPA, or

b. information is received, in whole or in part, after the certification of completion by EPA

and these previously unknown conditions or this information shows that the remedial action is not protective of human health and the environment.

#### XIX. INSURANCE AND INDEMNIFICATION

A. Prior to commencing any on-site work, Settlor shall obtain

or require its contractor(s) to obtain a policy or policies of insurance providing at least the following coverages in connection with the activities performed at the Site by the Settlor or its employees, representatives, contractors or subcontractors under this Consent Decree:

1. Comprehensive General Liability Insurance, including Contractors Protective Coverage, in an amount of not less than one million dollars (\$1,000,000) per occurrence, combined single limit;

2. Automobile Liability Insurance in an amount of not less than one million dollars (\$1,000,000) per occurrence;

3. Professional Liability Insurance in an amount of not less than one million dollars (\$1,000,000) per occurrence; and

4. Worker's Compensation Insurance adequate to meet the statutory requirements of all jurisdictions having authority over such claims, including but not limited to the State of Florida, and Employer's Liability Insurance in an amount of not less than five hundred thousand dollars (\$500,000) per occurrence.

B. The Settlor shall maintain such insurance or require its contractor(s) to maintain such insurance in force until EPA issues a certificate of completion for all Remedial Action Activities other than O&M. Prior to commencing any on-site work, and annually thereafter until completion of the Remedial Action Activities other than O&M, Settlor shall provide to the United States certification of coverages maintained in compliance with this Section. In addition, Settlor shall furnish the United States with copies of those policies purchased specifically for activities undertaken pursuant to this Consent Decree.

C. In the event that Settlor is unable to obtain or maintain any insurance or the amounts and coverage required by this Section, the Settlor shall demonstrate its ability to pay all claims that arise from the performance of the Remedial Action by obtaining, and presenting to EPA for approval within 30 days after the effective date of this Decree or within thirty (30) days of the lapse of any policy or required coverage, one of the following items: 1) performance bond; 2) letter of credit; or 3) guarantee by a third party. In lieu of any of the three items listed above, the Settlor may present to EPA, within 30 days after the effective date of this Decree, or within thirty (30) days of the lapse of any policy or required coverage, financial information sufficient to satisfy EPA that the Settlor has enough assets to make it unnecessary to require additional assurances. EPA shall have 90 days from the receipt of the information to make a determination of the adequacy of the financial assurance and to communicate that determination to the Settlor. The Settlor shall annually submit such financial information.

D. Anything herein notwithstanding, in no event shall the Settlor be relieved of its obligation to implement in a timely fashion the Remedial Design Work and Remedial Action including O&M under this Consent Decree by reason of any inability to obtain or failure to maintain in force any insurance policies or financial assurance mechanism required in this Section, or by reason of any dispute between the Settlor and any of its insurers or financial assurers pertaining to any claim arising out of the design,



construction, implementation, or operation of the remedy or arising out of any other activity required under this Consent Decree.

E. Failure by the Settlor to obtain or maintain any insurance or provide financial assurances required by this Section shall not be deemed to be a violation of this Consent Decree if the Settlor demonstrates that it or its contractor(s) have made good faith efforts to obtain such insurance or provide such financial assurance and that such insurance or assurance is not available.

F. The Settlor agrees to indemnify and save and hold harmless the United States, its agencies, departments, agents and employees (except the Navy) from any and all claims or causes of action arising from or on account of acts or omissions of the Settlor or its employees, agents, contractors or subcontractors in carrying out activities under this Consent Decree.

XX. COMPLIANCE WITH LAWS AND PERMITS

A. All activities undertaken by the Settlor pursuant to this Consent Decree shall be undertaken in accordance with the requirements of all applicable local, state and federal laws and regulations, and this Decree shall in no way relieve the Settlor of its obligation to comply with such laws and regulations governing its performance of the RD/RA. The parties contemplate that all permits or other approvals required to implement the RD/RA will be identified in the Remedial Design Work Plan and Remedial Action Plans required under Section VII of this Decree.

B. The parties agree that if Settlor or its contractor(s) arrange for the storage, treatment, disposal, or transportation

for disposal, of any hazardous substances at locations other than the Site, Settlor will obtain EPA's prior approval of the use of any such off-site facility and will comply with the applicable provisions of RCRA, 40 C.F.R. Parts 261, 262, 263, 264, 265.

EPA's approval will be based on its May 6, 1985 Policy Memorandum, "Procedures for Planning and Implementing Off Site Response Actions" and any revisions thereto.

#### XXI. SITE ACCESS

A. To the extent the Site is presently owned by persons that are not parties to this Consent Decree, or to the extent access to or use of property other than the Site is required for the proper and complete performance of this Consent Decree, the Settlor has obtained or will use its best efforts to obtain Site access agreements from the owners within thirty (30) days of the effective date of this Decree. Such access agreements shall provide the United States, EPA, the Settlor, and their representatives and contractors access to the Site at all times for purposes of effectuating and monitoring the terms of this Consent Decree and performing the RD/RA. In the event that Site access agreements are not obtained within the thirty day (30) period, the Settlor shall notify EPA within thirty-five (35) days of the effective date of this Decree regarding both the lack of such agreements and the efforts made to obtain them. If Settlor is unable to obtain the required access, EPA agrees to use its best efforts, consistent with its legal authority, to assist the Settlor in obtaining such access or use.

B. During the effective period of this Decree, the United States, EPA, and their representatives, including contractors, shall have access at all times to the Site to conduct any activity authorized by CERCLA, including but not limited to:

1. Monitoring the progress of Remedial Design and Remedial Action activities;
2. Reviewing or verifying any data or information developed by Settlor or Settlor's contractors including data or information submitted to EPA with respect to the RD/RA for the Site;
3. Conducting investigations or tests relating to contamination at or near the Site;
4. Obtaining samples at the Site;
5. Inspecting and copying records, files, sampling and monitoring data, operating logs, contracts, photographs, or other documents related to the Site or required to assess the Settlor's compliance with this Consent Decree, and
6. Inspecting sampling procedures and obtaining samples collected by the Settlor at the Site.

C. Nothing herein limits or otherwise affects any right of entry or access held by the United States or EPA pursuant to applicable laws, statutes, regulations, or permits.

D. The Force Majeure provision (Section XXII) shall govern any delays caused by or attributed to difficulties in obtaining access to the Site or access to or use of any other property required for the proper and complete performance of this Consent

Decree, provided the Settlor has used its best efforts to obtain such access to or use of the property.

E. All parties with access to the Site pursuant to this Section shall comply with all approved health and safety plans.

XXII. FORCE MAJEURE

A. "Force Majeure" for the purposes of this Consent Decree is defined as any event arising from causes beyond the control of the Settlor which cannot be overcome by due diligence and which delays or prevents the performance of any obligation under this Consent Decree. Neither the inability of the Settlor to pay for the work, nor increased cost of the work, nor the failure of the Settlor to apply for a required permit or approval, nor the failure of Settlor to provide in a timely manner all information required to obtain a permit or approval is a Force Majeure event.

B. When circumstances are occurring or have occurred which may delay the completion of any phase of the RD/RA or delay access to the Site or to any property on which any part of the RD/RA is to be performed, whether or not due to a Force Majeure event, the Settlor shall within two business days orally notify EPA's RPM and shall within seven (7) calendar days supply to EPA in writing the reason(s) for and anticipated duration of such delay, the measures taken and to be taken by the Settlor to prevent or minimize the delay, and the timetable for implementation of such measures. Failure to so notify EPA shall constitute a waiver of any claim of Force Majeure.

C. If EPA agrees that a delay is or was attributable to a

Force Majeure event, the parties may modify this Decree and/or other appropriate document (e.g., RD Work Plan, RD Report, RA Plan, or POP) pursuant to Section XXVI to provide such additional time as may be necessary to compensate for the delay caused by the Force Majeure event.

D. If EPA and the Settlor cannot agree that any delay in the achievement of the requirements of this Consent Decree, including the failure to submit any report or document, has been or will be caused by circumstances beyond the reasonable control of the Settlor, or cannot agree on the date or time period for completion of the delayed activities, the dispute shall be resolved in accordance with the provisions of the Dispute Resolution Section (Section XXIII) of this Consent Decree.

#### XXIII. DISPUTE RESOLUTION

A. Any dispute which arises under or with respect to this Consent Decree, the RD Work Plan, RD Reports, RA Plan Reports, POPs, O&M Plan or the Appendices, except for Appendices C and D, and Attachment hereto shall in the first instance be the subject of informal negotiations between EPA and the Settlor for a period of up to fifteen (15) calendar days from the time EPA and/or the Settlor give notice of the existence of the dispute. The period for negotiations may be extended by written agreement between EPA and the Settlor.

B. In the event that the parties cannot resolve a dispute by informal negotiations under Paragraph A of this Section, then the decision or interpretation advanced by EPA shall be considered

binding unless, within twenty (20) days after the end of the informal negotiations period, the Settlor files a petition with this Court setting forth the matter in dispute and the relief requested. Except as otherwise agreed to by the parties, the filing of a petition asking the Court to resolve a dispute shall not serve to extend or postpone the Settlor's obligations under this Consent Decree provided that payment of stipulated penalties with respect to the disputed issue(s) shall be stayed pending resolution of the dispute. In the event that the Settlor does not prevail on the dispute, stipulated penalties shall be assessed and paid as provided in Section XXV.

C. In any dispute resolution proceeding involving matters covered by Section 113(j)(2) of CERCLA, 42 U.S.C. §9613(j)(2), the Court shall apply the standards and provisions of Section 113(j)(2). If the dispute concerns an issue of science, or technology, or EPA policy, within the areas of EPA's expertise, the Court shall adopt the position proposed by EPA unless the Court finds that position to be arbitrary and capricious or otherwise not in accordance with the law. For any other dispute arising under the Decree, the Court shall determine the appropriate standard of review. In all disputes covered by this Section, the burden of proof shall rest with the Settlor.

#### XXIV. EFFECT OF SETTLEMENT

This Consent Decree was negotiated and executed by the United States and the Settlor pursuant to Section 122 of CERCLA, 42 U.S.C. §9622, in good faith to avoid expensive and protracted

litigation and represents a fair, reasonable and equitable settlement of the matters addressed herein.

XXV. STIPULATED PENALTIES

A. Except as provided in Section XXII (Force Majeure) and as may be otherwise provided in this Consent Decree, Settlor shall be liable to the EPA for the stipulated penalties set forth below for each day during which it fails to comply with the requirements of this Consent Decree including but not limited to any implementation schedule, payment or funding requirement, or completion deadline.

B. For each day during which Settlor fails to perform in accordance with schedules contained in this Consent Decree and contained in the various plans and reports incorporated by reference herein, any of the following activities:

- 1) Submittal and, if necessary, modification of the RD Work Plan;
- 2) Submittal and, if necessary, modification of RD Reports;
- 3) Submittal and, if necessary, modification of RA Plan Reports;
- 4) Submittal and, if necessary, modification of POPs;
- 5) Implementation of RA Plan Reports pursuant to POPs; and
- 6) Establishment of Trust Fund or Escrow account to implement Remedial Design and Remedial Action including Operation and Maintenance,

Settlor shall be liable to EPA for stipulated penalties in the following amounts:

<u>Period of Failure to Comply</u>	<u>Penalty Per Violation Per Day</u>
1st through 14th day	\$1,500
15th through 44th day	\$5,000
45th day and beyond	\$10,000

C. Settlor shall be liable to EPA for stipulated penalties in the amount of \$500 per violation for each day during which it fails to submit and, if necessary, modify monthly or semi-annual progress reports.

D. Settlor shall be liable to EPA for stipulated penalties in the amount of \$1,000 per violation for each day during which it fails to comply with all other requirements of this Consent Decree including but not limited to any implementation schedule, payment or funding requirement, notification requirement or completion deadline.

E. Upon EPA's determination that Settlor has failed to comply with the requirements of this Decree, EPA shall give Settlor written notice describing the noncompliance and stating the amount of penalties due.

F. All penalties owed to the EPA under this section shall be payable upon demand by EPA within 30 days of receipt of the notification of noncompliance. Such penalties shall be paid by certified or cashiers check made payable to "EPA Hazardous Substances Superfund," shall specifically reference the site and shall be sent to:

United States Environmental Protection Agency  
Superfund Accounting  
P.O. Box 371003M  
Pittsburgh, PA 15251  
ATTN: Superfund Collection Officer

with a copy to the remedial project manager.

G. All penalties begin to accrue on the day that complete performance is due, and continue through the final day of correction of the noncompliance.



H. Neither the filing of a petition to resolve a dispute nor the payment of penalties shall in any way alter Settlor's ultimate obligation to complete the performance required under this Decree.

I. Settlor may dispute EPA's right to the stated amount of penalties by filing a petition with the Court in accord with Section XXIII ("Dispute Resolution") herein, within thirty (30) days of receipt of the notification of noncompliance. Penalties shall accrue but will not be demanded during this period. If Settlor loses upon resolution, however, EPA has the right to collect all penalties which accrued prior to and during the period of dispute. Settlor bears the burden of proving that any dispute brought under this subsection is a good faith dispute. If it is found that Settlor has not invoked the dispute resolution provisions in good faith, EPA reserves the right to seek additional or other sanctions against Settlor.

J. Should Settlor fail to meet the schedule to perform any of the activities set forth in Paragraph B by not more than five (5) business days, but meet the schedule for notification of final completion of the construction phase of the remedial action as required by Section XIV (Completion of Remedial Construction Work), stipulated penalties for such failure to meet the schedules under Paragraph B shall, upon submitting such notification, be forgiven.

K. If Settlor refuses to pay stipulated penalties, EPA may institute contempt proceedings in the U.S. District Court for relief. However, nothing in this section shall be construed as

prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Settlor's violation of this Decree or of the statutes and regulations upon which it is based.

L. This section shall remain in full force and effect for the term of this Decree.

XXVI. MODIFICATION

No modification shall be made to this Consent Decree without written notification to and written approval of the parties to this Consent Decree and entry by the Court. No oral modification of this Decree shall be effective.

XXVII. EFFECTIVE AND TERMINATION DATES

A. This Consent Decree shall be effective upon the date of its entry by the Court.

B. Termination of this Consent Decree may only be effected upon completion of all Remedial Action activities including O&M operations as set forth in Section VII of this Consent Decree or as determined by the Court. Termination of this Consent Decree shall not affect the Covenant Not To Sue (Section XVIII) which shall remain in effect as an agreement between the parties.

C. If Settlor believes that all required work including O&M has been completed and Plaintiff disagrees, the dispute resolution process (Section XXII) may be invoked.

D. Settlor's liability for response and oversight costs, except liability for those costs paid pursuant to Section XVII (Cost Reimbursement) which terminates upon payment in accordance

with this Consent Decree, shall not terminate upon termination of this Consent Decree.

E. Settlor's obligation pursuant to Section XXXII ("Retention of Records") shall not terminate until six (6) years after the completion of the remedial action, or at such time as Settlor transfers all records to EPA in accordance with Section XXXII, Paragraph A.

XXVIII. RETENTION OF JURISDICTION;  
RESERVATION OF RIGHTS

A. This Court shall retain jurisdiction over this matter for the purposes of insuring compliance with the terms and conditions of this Consent Decree, and of adjudicating disputes between the parties under this Consent Decree.

B. Plaintiff and Settlor each retain their own right to enforce the terms of this Consent Decree and take any action authorized by federal or state law not inconsistent with the terms of this Consent Decree to achieve or maintain compliance with the terms and conditions of this Consent Decree.

C. The Settlor (and/or the Navy) may have the right to seek contribution, indemnity, and/or any other available remedy against other persons or entities not named in this Consent Decree. Nothing herein is intended to operate as a discharge of such persons or entities.

XXIX. NOTICES

Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be forwarded by one party to another, it

shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice in writing to the other parties. Written notice to the individuals listed below shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, the Remedial Project Manager (on behalf of EPA), and the Remedial Action Coordinator (on behalf of the Settlor), respectively.

As to the United States:

To: Chief, Environmental Enforcement Section  
Land and Natural Resources Division  
United States Department of Justice  
Post Office Box 7611 - Ben Franklin Station  
Washington, D.C. 20044-7611

and

Director, Waste Management Division  
United States Environmental  
Protection Agency, Region IV  
345 Courtland St., N.E.  
Atlanta, GA 30365

As to EPA:

To: The Remedial Project Manager

As to the Settlor:

To: The Remedial Action Coordinator

and

Director, Environmental Affairs  
Reichhold Chemicals, Inc.  
525 N. Broadway  
White Plains, NY 10603

and

Norman A. Dupont, Esquire  
Paul, Hastings, Janofsky & Walker  
555 South Flower Street  
Twenty-Second Floor  
Los Angeles, CA 90071

As to the Navy:

To: Michael Green  
Professional Engineer  
Southern Division  
Naval Facilities Engineering Command  
Code 11433  
P.O. Box 10068  
Charleston, South Carolina 29411-0068

XXX. ADMISSIBILITY OF DATA

For the purposes of any proceeding to resolve a dispute concerning the implementation of this Consent Decree, the parties waive any evidentiary objection to the admissibility into evidence of technical data gathered or generated and evaluated according to the Quality Assurance and Quality Control provisions of this Consent Decree, which data has been deemed acceptable under EPA's QA/QC review process. The Parties reserve all rights to argue that such data is erroneous and to challenge the evidentiary weight that such data should be given.

XXXI. DISCLAIMER OF LIABILITY

Notwithstanding any approvals which may be granted by EPA and/or other governmental entities, the United States shall not be liable for any injuries or damages to persons or property resulting from any acts or omissions of the Settlor, its officers, employees, agents, receivers, trustees, successors, assigns, contractors, subcontractors, or any other person acting on its behalf in carrying out any activities pursuant to this Consent Decree. Provided that nothing herein shall limit the liability of the U.S. Navy for one-half of the costs of any indemnification by Settlor made to its contractor pursuant to the Agreement

attached as Appendix D hereto or any other duty or liability of the U.S. Navy arising under said Agreement or the common law.

XXXII. RETENTION OF RECORDS

Until six (6) years after the completion of the Remedial Action, including O&M, the Settlor shall preserve and retain, or require that its contractors, subcontractors, the RAC and/or anyone else acting on the Settlor's behalf to retain all records, documents, and information of whatever kind, nature or description relating to the performance of the Remedial Action at the Site. At the Settlor's option, and upon ninety (90) days notice to EPA, all such records or legible copies thereof, shall be transferred to EPA. Should Settlor elect to exercise this option, all documents generated during the O&M period which are not transferred shall be delivered to the EPA RPM upon completion at the expiration of the O&M period.

XXXIII. OTHER PROVISIONS

A. The Settlor hereby consents to the terms of this Consent Decree, and hereby knowingly, willingly, and with advice of counsel waives any and all rights to appeal the entry of this Consent Decree. The Settlor hereby agrees that except as otherwise set forth herein, service of notice or any legal process for any purpose under this Consent Decree, including its enforcement, may be made by mailing a copy by first class mail, postage prepaid, to its undersigned attorney and representative identified in Section XXIX above. EPA agrees that service of notice or any legal process for any purpose under this Consent Decree including any dispute resolution action may be made by mailing a copy by

first class mail, postage prepaid, to representatives of the United States and of EPA identified in Section XXIX.

B. This Consent Decree may be executed in any number of counterparts, each of which shall be deemed an original but all of which taken together shall constitute one and the same instrument.

XXXIV. LODGING OF DECREE WITH THE COURT AND PUBLIC COMMENT

This Consent Decree shall be lodged with the Court for a period of thirty (30) days for public comment pursuant to the provisions of 28 C.F.R. §50.7, and it shall not be submitted to the Court for execution until the expiration of that period. Plaintiff reserves the right to withdraw or withhold its consent to a judgment based on this Consent Decree if the comments, views, and allegations concerning the Decree disclose facts or considerations which indicate that the Decree is inappropriate, improper, or inadequate. All parties reserve the right to oppose an attempt by any person to intervene in this action.

Comments on the Consent Decree shall be submitted to:


Assistant Attorney General  
Land and Natural Resources Division  
U.S. Department of Justice  
Washington, D.C. 20530

Regional Counsel  
U.S. Environmental Protection Agency - Region IV  
345 Courtland St., N.E.  
Atlanta, GA 30365

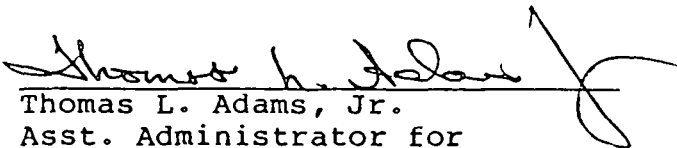
Plaintiff and Settlor by their duly authorized representatives agree to this Consent Decree subject to the Department of Justice public notice requirements set forth at 28 C.F.R. § 50.7 and public notice requirements pursuant to CERCLA set forth at 42 U.S.C. § 9622(i).

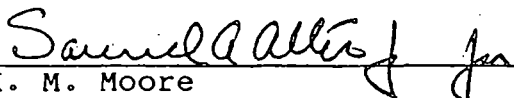
THE UNITED STATES OF AMERICA


Department of Justice


  
Roger J. Marzulla  
Asst. Attorney General  
for Land and Natural  
Resources  
Washington, D.C. 20530

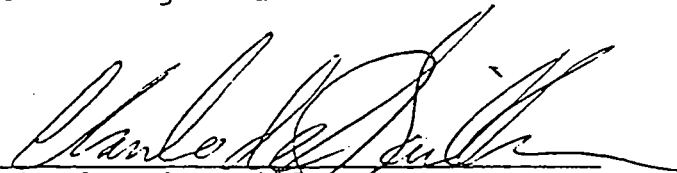
Environmental Protection Agency

  
Thomas L. Adams, Jr.  
Asst. Administrator for  
Enforcement and Compliance  
Monitoring  
Washington, D.C. 20460


  
K. M. Moore  
United States Attorney  
Northern District of Florida  
Tallahassee, Florida

  
James H. Sargent  
Regional Counsel  
EPA - Region IV

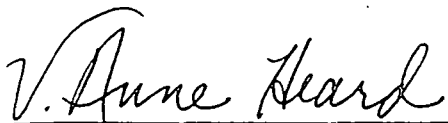
  
SAMUEL A. ALTER, JR.  
Asst. United States Attorney  
Northern District of Florida  
Pensacola, Florida

  
Charles de Saillan  
Attorney Advisor  
Office of Enforcement and  
Compliance Monitoring  
Washington, D.C. 20460

Department of Justice

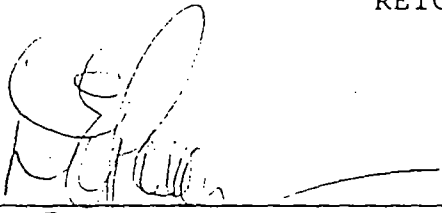
  
Leslie Allen  
Trial Attorney - Land and  
Natural Resources Division  
Environmental Enforcement Sect.  
Washington, D.C. 20530

Environmental Protection Agency

  
V. Anne Heard  
Assistant Regional Counsel  
EPA - Region IV  
Atlanta, GA 30365

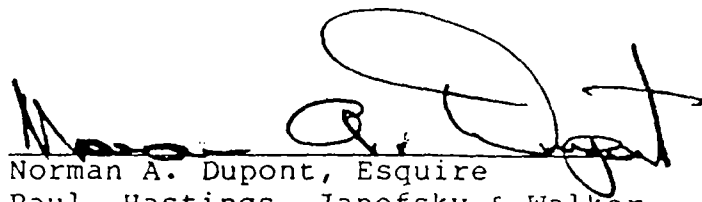


REICHHOLD CHEMICALS



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D. E. Pogue  
Senior Vice President -  
Administration  
Reichhold Chemicals, Inc.



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Norman A. Dupont, Esquire  
Paul, Hastings, Janofsky & Walker  
555 South Flower Street  
Twenty-Second Floor  
Los Angeles, CA 90071

ENTERED this \_\_\_\_\_ day of \_\_\_\_\_ 1988.

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United States District Judge